

Message Text

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PAGE 01 OECD P 09091 01 OF 03 101705Z

46

ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 AID-05 CEA-01 CIAE-00 COME-00

EB-07 EA-06 FRB-03 INR-07 IO-10 NEA-09 NSAE-00

OPIC-03 SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01

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P 101652Z APR 75

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LIMITED OFFICIAL USE SECTION 01 OF 03 OECD PARIS 09091

PASS TREAS FOR WIDMAN; L FOR FELDMAN AND EB FOR BOEKER;
JUSTICE FOR KAUPER

E.O.11652: N/A

TAGS: EFIN, EINV, OECD

SUBJECT: OECD AD HOC GROUP TO DRAFT STANDARDS OF
BEHAVIOR FOR MNE'S; FIRST MEETING APRIL 3-4

REFS: (A) STATE 72713

(B) OECD PARIS 7559

(C) IME(75)1

(D) STATE 65187

1. SUMMARY: OECD AD HOC GROUP TO DRAFT STANDARDS OF
BEHAVIOR MET ON APRIL 3-4 TO DISCUSS POSSIBLE APPROACHES
TO DRAFT STANDARDS OF BEHAVIOR FOR MNE'S. SEVERAL
DRAFTS WERE USED AS A BASIS FOR THE DISCUSSION. AD HOC
GROUP BEGAN TO FOCUS ON ISSUES INVOLVED IN DRAFTING
STANDARDS OF BEHAVIOR. SECRETARIAT WILL PREPARE A
REPORT AND NEW DRAFT STANDARDS REFLECTING THE DISCUS-
SIONS IN THE AD HOC GROUP. THIS REPORT MAY BE DISCUSSED
AT NEXT MEETING OF IME. IT IS EXPECTED THAT THE NEXT
MEETING OF THE GROUP WILL BE AROUND THE TIME OF THE NEXT
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PAGE 02 OECD P 09091 01 OF 03 101705Z

MEETING OF THE IME. END SUMMARY.

2. THE FIRST MEETING OF THE INFORMAL GROUP OF THE COMMITTEE ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES (IME) MET ON APRIL 3-4 TO DISCUSS POSSIBLE APPROACH TO STANDARDS OF BEHAVIOR FOR MNE'S. PARTICIPATING COUNTRIES WERE: FRG, BELGIUM, JAPAN, U.K., NETHERLANDS, SWEDEN, EEC, AND U.S. THE BASIC FORMAT OF THE DISCUSSION COMBINED THE ITEMS DESCRIBED IN REFTEL B WITH THE SUGGESTIONS OF REFTEL D, WHICH INCLUDED THE LAYING DOWN OF A BASIC FRAMEWORK FOR STANDARDS. BY THE END OF THE MEETING, EACH OF THE SUBJECT MATTER IN ANNEX I OF REFDOC C HAD BEEN COVERED IN A TOUR D'HORIZON OF THE COMMITTEE MEMBERS. IN ADDITION TO THE SECRETARIAT DRAFT (REFDOC C) AND A SECRETARIAT DRAFT PREAMBLE, U.S. PRELIMINARY TEXT FOR A POSSIBLE PREAMBLE AND STANDARDS OF BEHAVIOR (REFDOC A) WAS PRESENTED AND DISCUSSED, AS WELL AS A U.K. DRAFT, WHICH FOCUSED ON GENERAL STANDARDS, TECHNOLOGY, RESTRICTIVE BUSINESS PRACTICES, EMPLOYMENT AND INDUSTRIAL RELATIONS. A DETAILED SWEDISH TEXT ON DISCLOSURE OF INFORMATION WAS ALSO PRESENTED. SECRETARIAT DRAFT PREAMBLE, U.K. DRAFT AND SWEDISH DRAFT HAND-CARRIED BY FELDMAN FOR INTERESTED PARTIES.

3. IT WAS DECIDED (BASED UPON A SUGGESTION BY THE U.S. DELEGATE) THAT THE BEST WAY TO PROCEED AFTER THE MEETING WOULD BE FOR THE SECRETARIAT TO DRAFT A REPORT FOCUSING ON THE ISSUES (SEE BELOW) WHICH CAME UP DURING THE COURSE OF THE MEETING OF THE INFORMAL GROUP. THIS REPORT COULD BE DISCUSSED AT THE NEXT MEETING OF THE IME ON APRIL 28-29. FURTHERMORE, THE SECRETARIAT WILL SUBMIT (AS AN ANNEX TO THE REPORT) A NEW VERSION OF ANNEX I, INCLUDING A DRAFT PREAMBLE BASED ON SECRETARIAT AND U.S. VERSIONS, REFDOC C, REFLECTING THE DISCUSSIONS OF THE INFORMAL GROUP MEETING, ALSO UTILIZING THOSE PORTIONS OF THE U.S. AND U.K. DRAFTS WHICH SEEMED MORE PRACTICABLE TO THE GROUP. IN THE AREAS OF RESTRICTIVE BUSINESS PRACTICES, AND EMPLOYMENT AND INDUSTRIAL RELATIONS, THE INPUT OF WORKING PARTY II OF THE RESTRICTIVE BUSINESS PRACTICES COMMITTEE, MEETING ON APRIL 9, AND OF THE SPECIAL WORKING PARTY OF THE MANPOWER AND SOCIAL AFFAIRS LIMITED OFFICIAL USE

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PAGE 03 OECD P 09091 01 OF 03 101705Z

COMMITTEE, MEETING ON APRIL 16, WOULD BE UTILIZED TO AID THE SECRETARIAT IN DRAFTING THE PERTINENT SECTIONS OF THE STANDARDS OF BEHAVIOR.

4. IT WAS GENERALLY FELT THAT THE INITIAL FOCUS AND EMPHASIS OF THE EXERCISE WOULD BE TO DRAFT AS SOON AS PRACTICABLE RELATIVELY GENERAL STANDARDS, AT THE SAME TIME ENCOURAGING THE SPECIALIZED COMMITTEES WHICH ARE

WORKING IN THE AREA OF MNE'S TO COMPLETE THEIR WORK AS SOON AS POSSIBLE, AND NO LATER THAN WITHIN 18 MONTHS, SO THAT THE RESULTS OF THE WORK COULD BE REFLECTED IN THE TIME EXERCISE.(ALTHOUGH NOT DELAYING THE POSSIBLE IMPLEMENTATION OF THE GENERAL STANDARDS.)

5. THE U.S. DELEGATE INDICATED A STRONG DESIRE BY THE

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PAGE 01 OECD P 09091 02 OF 03 101708Z

46

ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 AID-05 CEA-01 CIAE-00 COME-00

EB-07 EA-06 FRB-03 INR-07 IO-10 NEA-09 NSAE-00

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P 101652Z APR 75

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LIMITED OFFICIAL USE SECTION 02 OF 03 OECD PARIS 09091

U.S. TO HAVE A BALANCED APPROACH TO THIS EXERCISE, REFLECTING BOTH THE DESIRE TO MOVE AHEAD AS QUICKLY AS POSSIBLE, YET TO PURSUE THE WORK IN THE SPECIALIZED COMMITTEES TO A PRODUCTIVE END. THE U.S. DELEGATE ALSO EMPHASIZED THE NEED FOR A LINKAGE BETWEEN STANDARDS AND NATIONAL TREATMENT AND INCENTIVES/DISINCENTIVES.

6. THE U.K. DELEGATE INDICATED THAT THE STANDARDS SHOULD BE IN THE NATURE OF GUIDELINES WHICH SUPPLEMENT NATIONAL AND INTERNATIONAL LEGAL REQUIREMENTS, RATHER THAN REQUIRING MNE'S TO OBEY NEWLY-ESTABLISHED LEGAL REQUIREMENTS. AT THE SAME TIME, THE JAPANESE ALSO SUPPORTED A BROADER AND MORE GENERALIZED DOCUMENT WHICH

COULD, AT LEAST INITIALLY, BE PUT INTO EFFECT WITHOUT WAITING FOR MORE DETAILED CONCLUSIONS FROM THE SPECIALIZED COMMITTEES. THE FRG ALSO SUPPORTED THE U.S. SUGGESTION FOR AN INITIAL MORE GENERAL APPROACH TO STANDARDS OF BEHAVIOR. SWEDEN DID NOT AGREE THAT THE STANDARDS SHOULD BE OF A GENERAL NATURE, AND ARGUED THAT IME SHOULD ASSUME THE RESPONSIBILITY OF GUIDING AND PRODDING THE SPECIALIZED COMMITTEES.

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PAGE 02 OECD P 09091 02 OF 03 101708Z

7. THERE WAS MUCH DISCUSSION OF THE SWEDISH PROPOSAL FOR REQUIREMENTS REGARDING INFORMATION. U.S. DELEGATE INDICATED THAT SUCH A SUBSTANTIVE AND TECHNICAL TEXT WAS INCONSISTENT WITH THE CONCEPT OF STANDARDS OF BEHAVIOR. FRG AGREED WITH U.S. CRITICISM, ADDING THAT THE SHEER AMOUNT OF INFORMATION REQUIRED BY THE SWEDISH PROPOSAL COULD BE ONEROUS AND UNWIELDY. FRG INDICATED THAT IN THIS AREA THE U.S. AND SECRETARIAT TEXTS WERE PREFERABLE. SECRETARIAT FELT THAT IT MIGHT BE SUFFICIENT TO SAY SOMETHING VERY GENERAL ON INFORMATION AND THEN EXAMINE WHAT INFORMATION IS ALREADY AVAILABLE AND PUBLISHED. A NEW DRAFT TEXT ON INFORMATION COULD BE A COMBINATION OF THE U.S. AND SECRETARIAT PROPOSALS, ADDING, PERHAPS, A NUMBER OF SPECIFIC REQUIREMENTS AS TO INFORMATION, I.E. GEOGRAPHICAL LOCATION, COMPOSITION, TURNOVER, OPERATING PROFIT, ETC. MOST OF THE GROUP DID NOT OBJECT TO THE SECRETARIAT SUGGESTION.

8. THE U.S. DELEGATE DISCUSSED THE QUESTION OF PHRASEOLOGY IN THE DRAFT STANDARDS REGARDING RESPECT FOR NATIONAL LAWS AND WHETHER THE CONCEPT SHOULD BE EXPLICIT OR IMPLICIT. THE U.K., IN ITS DRAFT, UTILIZED THE INTERNATIONAL CHAMBER OF COMMERCE GUIDELINE AS A BASIS. THE GROUP DECIDED THAT THIS WOULD BE ONE OF THE ISSUES WHICH THE SECRETARIAT WOULD DISCUSS IN ITS REPORT TO THE IME, ALTHOUGH THE JAPANESE DELEGATE EXPRESSED IRRITATION WITH THE GROUP'S DISCUSSION VIS-A-VIS RESPECT FOR NATIONAL LAWS.

9. THE GROUP ALSO QUESTIONED WHETHER THE SUBJECT OF JOINT VENTURES SHOULD BE INCLUDED IN THE STANDARDS. THE U.S. DELEGATE INDICATED THAT THERE MAY BE NO NEED FOR LANGUAGE TO THIS EFFECT IN AN OECD CONTEXT. THE U.K. DRAFT, HOWEVER, INCLUDED LANGUAGE REGARDING JOINT VENTURES ("LOCAL PARTICIPATION IN ENTERPRISES"), BUT THE U.K. DELEGATE CONSIDERED THE LIKELIHOOD THAT IT MAY NOT BE NECESSARY TO INCLUDE THIS LANGUAGE FOR OECD PURPOSES.

10. IN THE TECHNOLOGY AREA, IT BECAME CLEAR THAT THE
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PAGE 03 OECD P 09091 02 OF 03 101708Z

PROBLEM AREAS HAD NOT YET BEEN IDENTIFIED AND THAT THERE
MUST BE MUCH MORE WORK IN THE SCIENCE AND TECHNOLOGY
POLICY COMMITTEE BEFORE IT IS FEASIBLE TO CONSIDER A
TEXT FOR STANDARDS. THE SECRETARIAT SUGGESTED THE USE
OF RATHER GENERAL LANGUAGE, ELIMINATING THE DISTINC-
TION BETWEEN HOME AND HOST COUNTRIES, BECAUSE SOME
COUNTRIES IN THE OECD IN FACT ACT AS BOTH HOME AND HOST
COUNTRIES IN THE FIELD OF TECHNOLOGY TRANSFER. FURTHER,
IT WAS GENERALLY FELT THAT THE STANDARDS SHOULD CONTAIN
SOME REFERENCE ON THE DESIRABILITY OF PROTECTING THE
ENVIRONMENT.

11. IN THE AREA OF EMPLOYMENT AND INDUSTRIAL RELATIONS,
IT WAS GENERALLY FELT THAT IME SHOULD NOT PROCEED VERY
FAR IN ORDER NOT TO PREJUDICE THE WORK OF THE SPECIALIZED
COMMITTEE. SWEDEN INDICATED THAT IT ATTACHED GREAT
SIGNIFICANCE TO THIS SUBJECT, AND IT CANNOT ACCEPT A SET
OF STANDARDS OF BEHAVIOR WITHOUT SOME REFERENCE TO IT.
THERE WAS SOME SYMPATHY WITH THE U.K. DRAFT ON THIS SUB-
JECT IN THE GROUP. THE SECRETARIAT SAID IT WOULD PRODUCE
A CONSOLIDATED DRAFT TEXT (REFLECTING U.K. AND SECRE-
TARIAT SUGGESTIONS) FOR PRESENTATION TO THE WORKING

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PAGE 01 OECD P 09091 03 OF 03 101708Z

46

ACTION EUR-12

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P 101652Z APR 75

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LIMITED OFFICIAL USE SECTION 03 OF 03 OECD PARIS 09091

PARTY ON INDUSTRIAL RELATIONS, AND REPORT BACK TO IME.

12. IN THE AREA OF TAXATION, THE SECRETARIAT FELT THE U.S. DRAFT WAS QUITE ACCEPTABLE, AND IN MANY WAYS PROBABLY BETTER THAN THE SECRETARIAT VERSION, ALTHOUGH THE POSSIBILITY WAS LEFT OPEN THAT BOTH ALTERNATIVES WOULD BE LEFT IN THE NEXT VERSION OF THE SECRETARIAT DRAFT.

13. IT WAS GENERALLY FELT THAT THE SUBJECT OF RESTRICTIVE BUSINESS PRACTICES SHOULD BE DEALT WITH BY THE SPECIALIZED EXPERTS. THE RESTRICTIVE BUSINESS PRACTICES COMMITTEE WORKING PARTY NO. 11 IS TO MEET ON THIS SUBJECT ON APRIL 9 AND 10. THE GROUP DECIDED IT WOULD BE USEFUL FOR THIS WORKING PARTY TO STUDY THE DRAFT LANGUAGE SUGGESTED BY THE SECRETARIAT AND FORMULATE A VERSION WHICH COULD BE RESUBMITTED FOR INCLUSION IN THE DRAFT SUBMISSION TO IME. IT WAS FELT THAT THE U.K. DRAFT WOULD ALSO CONTRIBUTE TO THE RBP-WP11 WORK.

14. AS TO THE PREAMBLE, IT WAS GENERALLY AGREED THAT LIMITED OFFICIAL USE

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PAGE 02 OECD P 09091 03 OF 03 101708Z

THE SECRETARIAT VERSION WAS A REASONABLE START, WHICH COULD BE USED AS A BASIS FOR THE INTEGRATION OF SOME OF THE U.S. DRAFT PROPOSALS. THE ONLY CAVEAT WAS TO ELIMINATE SOME OF THE INCONSISTENCIES IN THE CONSIDERATA TO REFLECT BETTER THE BALANCED APPROACH REGARDING INTER-GOVERNMENTAL PROCEDURES. FURTHERMORE, IT WAS FELT THAT THE SECRETARIAT'S EXPOSITION OF INTERNATIONAL LEGAL REQUIREMENTS (E.G. EXPROPRIATION) MAY HAVE BEEN TOO EXPLICIT, AND THAT THE U.S. DRAFT (IN A GENERAL WAY) COULD BE THE BETTER ONE AS REGARDS THIS SUBJECT MATTER.

15. CONCLUSION: THE NET RESULT OF THE INFORMAL AD HOC GROUP'S MEETING WAS TO FOCUS ON THE ISSUES INVOLVED ON THE DRAFTING OF STANDARDS OF BEHAVIOR (IMPLEMENTATION, SCOPE, ESTABLISHMENT) AND TO DECIDE TO PRESENT THESE ISSUES TO IME FOR POSSIBLE DISCUSSION AT ITS NEXT MEET-

ING, AS WELL AS TO CONSOLIDATE SOME OF THE MEMBER COUNTRIES' DRAFTS INTO A NEW SECRETARIAT VERSION, LEAVING, AT LEAST IN SOME OF THE AREAS OPEN ALTERNATIVES (BRACKETED LANGUAGE) FOR FURTHER DISCUSSION AT LATER MEETINGS OF THE AD HOC GROUP. FURTHERMORE, THE SECRETARIAT'S DRAFT PREAMBLE WAS DISCUSSED, AND ITS APPROACH (WITH THOSE EXCEPTIONS MENTIONED ABOVE) GENERALLY APPROVED BY THE GROUP. IT IS EXPECTED THAT THE NEXT MEETING OF THE GROUP WILL OCCUR AROUND THE TIME OF THE NEXT MEETING OF IME (E.G. ON MAY 30, THE DAY AFTER IME).
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 10 APR 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: MorefiRH
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975OECDP09091
Document Source: CORE
Document Unique ID: 00
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Film Number: n/a
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Legacy Key: link1975/newtext/t19750460/aaaacdme.tel
Line Count: 342
Locator: TEXT ON-LINE
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 7
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: MorefiRH
Review Comment: n/a
Review Content Flags:
Review Date: 14 MAY 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <14 MAY 2003 by izenbei0>; APPROVED <14 MAY 2003 by MorefiRH>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: n/a
TAGS: EFIN, EINV, OECD
To: SECSTATE WASHDC
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006